

Central Intelligence Agency

§ 1905.4

3.2; E.O. 12356; U.S. v. Snepp, 444 U.S. 507 (1980).

SOURCE: 56 FR 41459, Aug. 21, 1991, unless otherwise noted.

§ 1905.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of (a) material contained in the files of CIA, (b) information relating to or based upon material contained in the files of CIA, and (c) information acquired by any person while such person was an employee of CIA as part of the performance of that person's official duties or because of that person's association with CIA.

§ 1905.2 Definitions.

For the purpose of this part:

(a) *CIA* or *Agency* means the Central Intelligence Agency and includes all staff elements of the Director of Central Intelligence.

(b) *Demand* means any subpoena, order, or other legal summons (except garnishment orders) that is issued by a federal, state, or local governmental entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

(c) *Employee* means any officer, any staff, contract, or other employee of CIA; any person including independent contractors associated with or acting on behalf of CIA; and any person formerly having such a relationship with CIA.

(d) *Production* or *produce* means the disclosure of:

(1) Any material contained in the files of CIA; or

(2) Any information relating to material contained in the files of CIA, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by persons while such persons were employees of CIA as a part of the performance of their official duties or because of their official status or association with CIA;

in response to a demand upon an employee of CIA.

(e) *General Counsel* includes the Deputy General Counsel or Acting General Counsel.

§ 1905.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part applies to former employees to the extent consistent with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1905.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify the Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505 (703/874-3118), which shall follow the procedures set forth in this section.

(b) The General Counsel of CIA and Deputy Directors or Heads of Independent Offices with responsibility for the information sought in the demand, or their designees, shall determine whether any information or materials may properly be produced in response to the demand, except that the Office of General Counsel may assert any and all legal defenses and objections to the demand available to CIA prior to the start of any search for information responsive to the demand. CIA may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by CIA has been made by the entity or person that issued the demand.

(c) CIA officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would be inconsistent with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods;

(iii) Disclosure would violate a specific CIA regulation or directive;

(iv) Disclosure would reveal classified information;

(v) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(vi) Disclosure would unduly interfere with the orderly conduct of CIA's functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the CIA is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the CIA Office of General Counsel.

(e) The Office of General Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, an attorney from the Office of General Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this Regulation and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate CIA officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

(g) If the court or other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with

§1905.4(g), or rules that the demand must be complied with irrespective of instructions rendered in accordance with this part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by the General Counsel of CIA, or designee, respectfully decline to comply with the demand under the authority of *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this Regulation.

(h) With respect to any function granted to CIA officials in this part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials.

(i) Any nonemployee who receives a demand for the production or disclosure of CIA information acquired because of that person's association or contacts with CIA should notify CIA's Office of General Counsel, Litigation Division (703/874-3118) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.

PART 1906—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE CENTRAL INTELLIGENCE AGENCY

Sec.

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AUTHORITY: 19 U.S.C. 794.

SOURCE: 57 FR 39610, Sept. 1, 1992, unless otherwise noted.